

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

February 24, 1998

Marilyn L. Graves  
Clerk, Court of Appeals  
of Wisconsin

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. 97-2327-CR

STATE OF WISCONSIN

IN COURT OF APPEALS  
DISTRICT III

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STATE OF WISCONSIN,

**PLAINTIFF-RESPONDENT,**

V.

COLE E. ANDERSON,

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Shawano County:  
THOMAS G. GROVER, Judge. *Reversed.*

MYSE, J. Cole E. Anderson appeals a judgment of conviction for operating a motor vehicle after revocation, seventh offense. Anderson contends that because the sole basis of the revocation was his failure to pay a fine or forfeiture, the trial court erred by refusing to limit the punishment to a civil forfeiture under § 343.44(2)(e)2, STATS. Because there is no evidence that

Anderson has ever been suspended or revoked for anything other than the failure to pay a fine or forfeiture, the judgment is reversed.

The facts of this case are not disputed. Cole Anderson was stopped for speeding by a Shawano County deputy sheriff. Anderson acknowledged that he did not possess a valid Wisconsin driver's license. Anderson's driving abstract showed this to be his seventh offense for operating after revocation.

Anderson was prosecuted and convicted, and criminal penalties were assessed against him. Anderson appeals, claiming that the appropriate statute establishes only a civil forfeiture for his admitted violation. This argument requires an examination and interpretation of the relevant statute's terms and provisions, which are reviewed as questions of law without deference to the trial court's determination. *State v. Taylor*, 170 Wis.2d 524, 527, 489 N.W.2d 664, 666 (Ct. App. 1992).

The provisions of § 343.44(2)(e)2, STATS., provide:

If the revocation or suspension that is the basis of a violation was imposed solely due to a failure to pay a fine or a forfeiture, or was imposed solely due to a failure to pay a fine or forfeiture and one or more subsequent convictions for violating sub. (1), the person may be required to forfeit not more than \$2,500. This subdivision applies regardless of the person's failure to reinstate his or her operating privilege.

This court has reviewed Anderson's driving abstract, which discloses that each violation is related to the failure to pay a fine. The State argues that this statute is nevertheless inapplicable because Anderson should be considered to have been previously suspended for failing to provide proof of financial responsibility. If Anderson had been suspended for this failure, it would

be sufficient to support the current imposition of criminal charges. *See State v. Biljan*, 177 Wis.2d 14, 501 N.W.2d 820 (Ct. App. 1993). The record reveals, however, that Anderson's failure to provide proof of financial responsibility in fact has never been punished. A letter from the Wisconsin Department of Transportation to the prosecutor in this case states:

WISDOT records show that Mr. Anderson posted insurance with WISDOT and that that insurance lapsed. Because Mr. Anderson has never held a license, however, no license action ever resulted from that lapse. *In other words, no license or operating privilege cancellation, suspension or revocation resulted from that lapse.* (Emphasis added.)

The State urges this court to ignore the clear language of this letter and conclude that Anderson had in fact been revoked or suspended for failing to carry insurance. This result, the State argues, would avoid an absurd result, because Anderson's license would have been revoked if he had had one. By allowing him to be charged only civilly, the State argues, Anderson is given an unfair advantage solely because he failed to obtain a license.

Although this court is sympathetic to the State's arguments, it is unwilling to ignore the facts of record and the clear language of the statute. Section 343.44(2)(e)2, STATS., dictates that until Anderson is revoked or suspended for a reason other than his failure to pay a fine or forfeiture, he cannot be charged criminally. As there is no evidence of such in this case, the judgment must be reversed.

*By the Court.*—Judgment reversed.

This opinion will not be published. RULE 809.23(1)(b)4, STATS.

